

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	Case No. 1:10-bk-10595
		Chapter 13
Ronald Richard Beardsley	:	
Connie Sue Beardsley	:	Judge Jeffery P. Hopkins
	:	
Debtors.	:	<u>MOTION TO MODIFY PLAN</u>
	:	
	:	

Now come the Debtors, by and through counsel, and respectfully move this Court to modify the most recently confirmed plan on this case, as set forth in Debtor's Second Amended Plan, filed herewith. In support of the motion, Debtors submit the following:

1. A plan has been confirmed.
2. Date petition filed: February 2, 2010 Date last modification filed: n/a
3. Date plan confirmed: April 27, 2010 Date last modification confirmed: n/a
4. Length of Plan (months):

Current: 48	Proposed: 54 (with 41 remaining)
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5. Monthly Plan Payments:

Current: \$ 627.00	Proposed: \$ 2,086.00 (with "conduit" mortgage)
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Amended Schedules I and J are filed herewith.
6. Percent to Unsecured Creditors:

Current: 100 %	Proposed: 100%
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If the plan proposes to lower the plan percentage to unsecured creditors, then choose one of the following: n/a

____ Debtor(s) case was filed **prior** to October 17, 2005 and the new plan percentage is consistent with the liquidation analysis filed on _____(date), or Debtor(s) attach an amended liquidation analysis and will file it with the Court.

- ____ Debtor(s) case was filed on or after October 17, 2005, Debtor(s) were BELOW MEDIAN income at time of filing and the new plan percentage is consistent with the liquidation analysis filed on _____ (date), or Debtor(s) attach an amended liquidation analysis and will file it with the Court.
- ____ Debtor(s) case was filed on or after October 17, 2005, Debtor(s) were ABOVE MEDIAN income at the time of filing with a **Negative DMI** on Form B22(c) and the new plan percentage is consistent with the liquidation analysis filed on _____ (date) or Debtor(s) attach an amended liquidation analysis and will file it with the Court.
- ____ Debtor(s) case was filed on or after October 17, 2005, Debtor(s) were ABOVE MEDIAN income at the time of filing with a **Positive DMI** on Form B22(c) and the new plan percentage is consistent with the DMI X 60 calculation OR Debtor(s) provide evidence of change in circumstance pursuant to 11 USC §1329, if the plan percentage deviates from the requirements of Form B22(C) and 11 USC 1325(b)(1)(B).

7. Reason for the modification, including any changes in circumstances since last plan:

The plan is modified to accommodate a supplemental claim filed on a post-petition mortgage arrearage, and pursuant to an agreed order resolving a motion for relief from stay. The plan, modified to a "conduit mortgage plan," also proposes that the regular ongoing mortgage payments be paid through the plan, by the Trustee.

8. Details of effects of the modification on rights of creditors: No creditor is adversely affected.

(Debtor(s) here incorporate, by reference, and as if fully restated, the terms of Debtors' Second Amended Plan, the terms of which shall control over any other summary contained herein.)

The proposed modification increases the proposed length of the plan.

The proposed modification increases the amount of the plan payment.

The proposed modification leaves unchanged the percentage dividend payable to unsecured creditors.

Below is a list of the affected Creditors, applicable plan paragraphs affected and proposed new plan treatment.

(NOTE: The following list is intended to include creditors specifically identified in modified plan provisions, and not to include creditors affected by changes respecting an entire class of creditors or all creditors. Debtor reiterates that the terms of the amended plan shall be deemed to

control over any restatement or summary contained herein, and/or where no restatement or summary is contained herein. Debtor urges any and all creditors served with this motion to refer to such amended plan for any proposed modification respecting the creditor.)

Creditor name: U.S. Bank, N.A.

Type of Claim: () secured () unsecured () priority (X) other

Nature of Claim: Cure of Mortgage arrearage, 11 USC 1322(b)(5)

Current Plan (Paragraph No. 10):

10. PLAN DISBURSEMENTS - DEFAULT PAYMENTS "INSIDE THE PLAN"

Debtor(s) proposes to cure defaults to the following creditors by payment of the following monthly payments by the Trustee:

Creditor	Monthly Paymt	Default to be Cured	Interest paid ? (Y/N)
(1) US Bank, N.A.	\$375.00	\$18,000.00	N
(2) -	\$0.00	\$0.00	N
(3) -	\$0.00	\$0.00	N

* * *

Proposed Plan (Paragraph Nos. 10, 11):

10. PLAN DISBURSEMENTS - DEFAULT PAYMENTS "INSIDE THE PLAN"

Debtor(s) proposes to cure defaults to the following creditors by payment of the following monthly payments by the Trustee:

Creditor	Monthly Paymt	Default to be Cured	Interest paid ? (Y/N)
(1) US Bank, N.A.	\$322.00	\$13,164.00	N
(2) US Bank, N.A. (Supp claim)	\$247.00	\$10,087.43	N
(3) -	\$0.00	\$0.00	N

Interest on Pre-petition Mortgage Arrearage Claim(s)

Mortgage arrearage claims involving mortgages that were entered into after October 22, 1994, shall not be paid interest.

Unless modification of creditor(s)' rights is specified in the Plan, the debtor(s)' statement(s) of the arrearage(s) under this paragraph shall be considered estimate(s), and the Trustee shall schedule the claims in the amount(s) set forth in the creditor(s)' respective Proofs of Claim (subject to debtor(s)' objections thereto).

11. MORTGAGE CLAIMS

Regular mortgage payment

If the Trustee is paying the "regular" mortgage payment, any proof of claim must specify the arrearage amount and the principal amount. Also, the holder of the mortgage shall file an amended proof of claim for any changes in the required periodic mortgage payments during the life of the Plan; and the Plan will be deemed to have been modified and the Trustee will disburse the mortgage payments according to the amended proof of claim.

Mortgagee	Monthly Payment	Paymts Beginning
(1) US Bank, N.A.	\$1,021.40	May 2011

Interest should not be paid on this monthly payment.

WHEREFORE, Debtors pray for a modification of the current plan, and for such additional or alternative relief as may be just and proper.

/s/ Daniel S. Zegarski

Daniel S. Zegarski (0065562)
8080 Beckett Center Drive, Suite 200
West Chester, Ohio 45069
(513) 651-4226
(513) 651-0224 - fax
zegarskilaw@fuse.net

In re: : Case No. **1:10-bk-10595**
Ronald Richard Beardsley : Chapter 13
Connie Sue Beardsley :
Debtors. Judge Jeffery P. Hopkins

NOTICE OF MOTION

Debtors have filed with the Court a Motion to Modify Plan.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant or allow the relief sought in the motion, or if you want the Court to consider your views on the motion, then on or before **twenty-one (21) days** from the date set forth in the certificate of service for the motion/objection, **or within such shorter time period as the Court may order**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to: Office of the Clerk, U. S. Bankruptcy Court, Atrium Two, 8th Floor, 221 East Fourth Street, Cincinnati, OH 45202, or your attorney must file a response using the court's ECF System.

The court must receive your response on or before the above date. You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Daniel S. Zegarski
700 Walnut Street Ste. 202
Cincinnati, Ohio 45202

U.S. Trustee
36 East Seventh Street, Suite 2030
Cincinnati, Ohio 45202

Ronald Richard Beardsley
Connie Sue Beardsley
3456 Muddy Creek Road
Cincinnati, OH 45238

Margaret A. Burks, Trustee
600 Vine Street #2200
Cincinnati, OH 45202

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion/objection and may enter an order granting that relief without further hearing or notice.

Date of service: **May 17, 2011**

/s/ Daniel S. Zegarski

Daniel S. Zegarski (0065562)
8080 Beckett Center Drive, Suite 200
West Chester, Ohio 45069
(513) 651-4226
(513) 651-0224 - fax
zegarskilaw@fuse.net

CERTIFICATE OF SERVICE

I hereby certify that, on this date of **May 17, 2011**, a copy of this Motion to Modify Plan was sent by electronic mail and/or ordinary U.S. mail to:

Ronald Richard Beardsley
Connie Sue Beardsley
3456 Muddy Creek Road
Cincinnati, OH 45238

U.S. Trustee
36 East Seventh Street, Suite 2030
Cincinnati, Ohio 45202

Margaret A. Burks, Trustee
600 Vine Street #2200
Cincinnati, OH 45202

Lerner, Sampson & Rothfuss
P.O. Box 5480
Cincinnati, OH 45201

/s/ Daniel S. Zegarski

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8080 Beckett Center Drive, Suite 200
West Chester, Ohio 45069
(513) 651-4226
(513) 651-0224 - fax
zegarskilaw@fuse.net